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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1931

No. 600

KEZIAH REED, GEORGIANA R. SIMPSON, LILLIAN M. H. REDDING, ETC., ET AL., PETITIONERS,

vs.

LORENZO ALLEN

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI FILED DECEMBER 29, 1931

CERTIORARI GRANTED JANUARY 25, 1932

(36,414)

(36,414)

SUPREME COURT OF THE UNITED STATES

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[fol. 1] [Captions omitted]

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

At Law. No. 74482

LORENZO ALLEN, Plaintiff,

vs.

HANNAH STEVENSON, Defendant

DECLARATION—Filed December 14, 1927

First Count. That Lorenzo Allen sues the defendant Hannah Stevenson, to recover possession of the following described premises, to wit:

Lot eight hundred and seven (807) in Square three hundred and nine (309) Known as premises 1612 Eleventh [fol. 2] Street, Northwest, situated in the City of Washington, District of Columbia, and all of rights, privileges, easements and appurtenances to the said land belonging or in anywise appertaining, in which said land and premises the said plaintiff claims the ownership in fee simple as the sole lineal heir of Silas Holmes, deceased, his great-grandfather, see Exhibit "A" attached and to be considered as a part hereof and plaintiff says that he was heretofore, to wit on the sixth day of August, 1926, lawfully possessed of said land and premises, and on said date while plaintiff was so lawfully possessed, the defendant entered wrongfully into possession of the same, and withholds possession thereof from the plaintiff.

And the plaintiff claims possession of the said land and the improvements thereon and the appurtenances thereunto belonging, together with the costs of this suit.

Second Count. And the plaintiff, Lorenzo Allen sues the defendant Hannah Stevenson, for money payable by defendant to the plaintiff, for that defendant, having as aforesaid, ejected the plaintiff from the aforesaid premises, has from the day and date aforesaid taken, and received and continues to take and receive, the rents, issues, and profits thereof, and to use, occupy, and enjoy the said premises to

the damage of the plaintiff in the sum of three hundred and forty dollars ($340.00), which amount the plaintiff claims, besides the cost of this suit.

George E. C. Hayes, W. H. Lewis, Chas. H. Hemans,
Attorneys for Plaintiff.

List in Support of Declaration

1. Deed from William B. Todd to Silas Holmes, dated the 18th day of September, 1865, and recorded December 7, 1865, among the Land Records of the District of Columbia.

2. Deed from William B. Todd, et ux. to Silas Holmes, dated the 15th day of January, 1870, and recorded January 29, 1870, among the Land Records of the District of Columbia.

[fol. 3] 3. Deed from William E. Todd, et ux. to Silas Holmes, dated the 15th day of January, 1870, and recorded October 2, 1888, as instrument No. 23, among the Land Records of the District of Columbia.

4. The pleadings and proceedings in the cause of Thomas Walker, Plaintiff vs. Lorenzo Allen, et al., Defendants, Equity No. 40408, In The Supreme Court of the District of Columbia.

5. The pleadings and proceedings in the case of Lorenzo Allen, Appellant vs. Keziah Reed, et al., Appellants, No. 4426, In The Court of Appeals of the District of Columbia.

George E. C. Hayes, W. H. Lewis, Chas. H. Hemans,
Attorneys for Plaintiff.

In Supreme Court of District of Columbia

Motion of Keziah Reed et al. to be Substituted as Parties Defendant—Filed January 4, 1928

Come now Keziah Reed, Thomas Johnson, Annie Goodwin, James T. Holmes, Joseph E. Holmes, Lillian Holmes, Jennie B. Goldsborough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robin-

son, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding, James T. S. Redding, Lillian M. H. Redding, Infant, by her next friend Lewis H. Redding, Margaret M. Redding, infant, by her next friend Lewis H. Redding, by their attorneys, Clephane and Latimer, and say that Hannah Stevenson, named as defendant in the declaration herein filed, is their lessee or tenant of the land and premises described in said declaration, and they now move, in accordance with the statute in such cases made and provided, that they be made parties defendant herein in the place and stead of the said Hannah Stevenson to enable them to defend this action.

In support of the foregoing motion there is attached hereto and prayed to be read as a part hereof, the affidavit of the said defendant Hannah Stevenson.

Walter C. Clephane, J. Wilmer Latimer, Attorneys for the Above-named Moving Parties.

[fol. 4] Notice

To Messrs. George E. C. Davis, W. H. Lewis, Charles H. Hemans, Attorneys for Plaintiff:

Please take notice that the foregoing motion will be for hearing before the Justice holding the Circuit Court to which it may be assigned on Friday, January 6, 1928.

Walter C. Clephane, J. Wilmer Latimer, Attorneys for the Above-named Moving Parties.

AFFIDAVIT IN SUPPORT OF MOTION TO SUBSTITUTE PARTIES DEFENDANT

* * * * * * * *

DISTRICT OF COLUMBIA, ss:

Hannah Stevenson, being first duly sworn, on oath deposes and says, that she is the same person named as defendant in the declaration filed herein to recover possession of Lot Eight Hundred Seven (807) in Square Three Hundred and Nine (309), known as premises No. 1612 Eleventh Street, Northwest, situated in the City of Washington, District of Columbia; that this affiant is now and was at the

time of the filing of the above-entitled suit, and the service of process upon her therein, in possession of said land and premises as the tenant or lessee of Keziah Reed, Thomas Johnson, Annie Goodwin, James T. Holmes, Joseph E. Holmes, Lillian Holmes, Jennie B. Goldsborough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robinson, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding, James T. S. Redding, Lillian M. H. Redding, Infant, Margaret M. Redding; that she has no other interest in the subject-matter of this suit, and, therefore, she hereby requests and consents that said last-named persons be made parties herein in the place and stead of this affiant.

Hannah Stevenson.

Subscribed and sworn to before me this 29th day of December, A. D. 1927. Ella Becker, Notary Public., D. C. (Seal.)

[fol. 5] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

ORDER GRANTING MOTION TO BE MADE PARTIES DEFENDANT—January 6, 1928

Session resumed pursuant to adjournment Mr. Justice Bailey, presiding.

* * * * * * * *

Upon consideration of the motion of Keziah Reed and others to be substituted as parties defendant, and by agreement of the counsel herein, it is ordered that Keziah Reed, Thomas Johnson, Annie Goodwin, James T. Holmes, Joseph E. Holmes, Lillian Holmes, Jennie B. Goldsborough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robinson, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding, James T. S. Redding, Lillian M. H. Redding, infant, by her next friend Lewis H. Redding, Margaret M. Redding, infant, by her next friend Lewis H.

Redding, by their attorneys, Clephane and Latimer, be, and they are hereby, made parties defendant herein in the place and stead of the said Hannah Stevenson.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

PLEAS—Filed January 16, 1928

* * * * * * * *

I. Come now Keziah Reed, Thomas Johnson, Annie Goodwin, James T. Holmes, Joseph E. Holmes, Lillian Holmes (now Lillian Holmes Redding), Jennie B. Goldsborough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robinson, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding and James T. S. Redding, who, by order of this Honorable Court, have been substituted among the parties defendant in this case in place of their tenant Hannah Stevenson, originally named as defendant herein, and for plea to the declaration and each count thereof say:

[fol. 6] That heretofore, to wit, on the first day of June, 1926, at the City of Washington, in the District of Columbia, a suit in ejectment was filed against the plaintiff in this cause in this Honorable Court, the same being numbered 71594, at Law, in which said suit the same persons who are now defendants in this suit were plaintiffs; that in said ejectment suit filed in 1926, as aforesaid, there was one other party plaintiff, to wit, Silas Holmes, a nephew of the Silas Holmes mentioned in the declaration in the case at bar, and which said nephew has, since the judgment in the said ejectment suit of 1926, departed this life intestate, leaving as his only heirs at law his brothers and sisters James T. Holmes, Joseph E. Holmes, Lillian Holmes (now Lillian Holmes Redding), Jesse V. Holmes, Jennie B. Goldsborough, and the husband, Lewis H. Redding, of a deceased sister, Mary Redding, who departed this life intestate, leaving as her only heirs at law and next of kin, the following children, Louis L. Redding, Cora G. Redding, James T. S. Redding, who are adults and Lillian M. Red-

ding and Margaret M. Redding, who are infants, all of which persons were parties plaintiff to the said ejectment suit of 1926, and are now parties defendant in this suit. And these defendants also say that the property claimed in said ejectment suit in 1926, embraced the same identical property as is claimed in the declaration filed in this suit, and the title to the said property upon which the defendant in that suit relied is the same title as that by virtue of which he is claiming to recover in the suit at bar. And in both of said suits the declarations contain counts for mesne profits from the said identical property. And defendants say that such proceedings were had in this Court and in the ejectment suit of 1926, so as aforesaid brought by the plaintiffs therein against the plaintiff in this suit, who was defendant therein, that afterwards, to wit, on the 2d day of August 1926, it was by this Court considered and adjudged that the plaintiffs therein who are the substituted defendants in this suit should recover from the defendant in said suit of 1926, who is the plaintiff in this suit, the possession of the real estate claimed by the plaintiff in this suit, and the mesne profits therefrom to the time of the judgment therein, as well as the costs of said action to be taxed by the Clerk, with the right to have execution therefor, thereby [fol. 7] establishing the title to said real estate as between the parties thereto and hereto, as by the record and proceedings thereof still remaining in this court will more fully and at large appear; which said judgment still remains in full force and effect, not appealed from, and not in the least reversed or made void.

II. For a further plea to the first count of said declaration, these defendants admit that plaintiff claims the ownership of the land and premises therein mentioned and described, and they also admit that on, to wit, the 6th day of August, 1926, defendants, through their tenant Hannah Stevenson, entered into possession thereof, but defendants deny that plaintiff was on, to wit, said last named date, lawfully possessed thereof. As to all other averments of said first count these defendants say that they have no knowledge or information thereof sufficient to form a belief.

III. And for a further plea to the second count of said declaration these defendants say that from the date therein referred to they have taken and received and now continue

to take and receive the rents and issues from said premises, being the rents paid by their tenant, Hannah Stevenson, and that through their said tenant they have used, occupied and enjoyed the premises therein referred to. But these defendants say that there have been no profits from the said premises nor are there likely to be for many months to come, because all the rents and issues therefrom have been necessarily expended in paying for needed repairs thereon and for taxes and other expenses in connection with said property. As to all other averments of said second count defendants say that they have no knowledge or information thereof sufficient to form a belief.

Clephane & Latimer, Gilbert L. Hall, Attorneys for Defendants Above Named.

[fol. 8] List of All Deeds, Proceedings, or Other Documents Relied Upon by Defendants as Constituting Chain of Title

* * * * * * *

Deeds: None.

Proceedings: The pleadings and proceedings in the case of Keziah Reed, et al. vs. Lorenzo Allen, At Law No. 71594, in the Supreme Court of the District of Columbia.

Other documents: None.

Clephane & Latimer, Gilbert L. Hall, Attorneys for Defendants Above Named.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

STIPULATION AS TO AMENDING DECLARATION, ETC.—Filed January 16, 1930

* * * * * * *

It is hereby stipulated by and between the attorneys of record herein for the plaintiff and for the defendants, as follows:

1. Count 1 of the declaration herein shall stand amended by substituting the date of May 28, 1927, in lieu of the date, August 6, 1926, and Count 2 of said declaration shall stand

amended by inserting the date of May 28, 1927, in lieu of the words "from the day and date aforesaid".

2. The plaintiff may forthwith file a replication to the plea herein of the adult defendants filed January 19, 1928, to the declaration and each count thereof.

3. The adult defendants may within ten days, excluding Sundays and legal holidays from the date of the filing of said replication, reply or plead thereto as they may be advised, and thereafter further pleading, if any, shall conform to the rules of this Court.

4. Pending the conclusion of the further pleadings hereinbefore provided for, this suit shall remain upon the trial calendar and may be placed upon the daily assignment for trial upon motion of any of the parties, when the pleadings have been perfected and the case is at issue.

[fol. 9] 5. This suit and Law No. 74481, pending in this Court between the same parties, shall be consolidated for trial and tried together.

Dated this 16th day of January, 1930.

Alvin L. Newmyer, George C. Gertman, Attorneys for Plaintiff. Clephane & Latimer, Attorneys for Defendants.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

REPLICATION—Filed January 16, 1930

* * * * * * *

By permission of the Court first obtained to file this replication, the plaintiff says:

It is true, as alleged in the said plea, that on the first day of June, 1926, the substituted defendants here filed against the plaintiff here (defendant there) a suit in ejectment in this honorable Court, same being No. 71,594, at law, claiming the same property as described in the declaration herein.

Plaintiff says, however, that in that suit the said defendants here (who were plaintiffs there) as their source of title and right to possession, relied solely upon items 4 and 5 of the last Will and testament of Silas Holmes, deceased,

recorded in the office of the Register of Wills of the District of Columbia in Wills Book 44 folio 145, and upon a decree of the Supreme Court of the District of Columbia passed in Equity Cause No. 40,408, dated July 24, 1925, recorded in Equity Minutes No. 125 at page 318 of said Court, and from which decree plaintiff Alonzo Allen perfected an appeal to the Court of Appeals of the District of Columbia. Items 4 and 5 of said Will, and said decree of July 24, 1925, being as follows:

Item 4. That upon the decease of my said wife and daughter, the latter leaving issue her surviving, who are minors, all of said above described Real E-tate, remaining unsold, as hereinafter provided, shall be sold by the then executor of my will, under the authority of the Orphans' [fol. 10] Court of the District of Columbia and the proceeds thereof invested under the orders of said court, and the interest arising from said investment applied to the support of said minor children of my said daughter, and the principal, upon said children arriving at the majority of the youngest of them, shall be divided into and paid to them in equal shares; after deducting from said principal one Thousand Dollars, of said sum, which I hereby give, devise and bequeath to my nephew and adopted son, Walter Holmes.

Item 5. If after the decease of my said wife, my daughter shall die without leaving issue surviving, then in that case, I will, devise, and bequeath all of said property to the said nephew and adopted son, Walter Holmes, and to my brothers and sisters then living, or to their heirs, if deceased, in equal shares.

This cause came on to be heard upon the issues raised by the pleadings between the parties defendant hereto, as more particularly set forth in their answers to the bill of complaint, said defendants Lorenzo Allen on the one hand and the defendants Keziah Reed, et al., on the other, having heretofore by decree entered herein been required to interplead between them touching their rights to the fund ordered to be deposited in the Registry of the Court by the plaintiff, Thomas Walker, and it appearing to the Court that the determination of the proper disposition of said

money depends upon the true construction of the last will and testament of Silas Holmes, deceased, late of the District of Columbia, duly admitted to probate and record by this Honorable Court and now of record in the office of the Register of Wills of the District of Columbia, and the parties having stipulated in open court that the facts set forth in the bill of complaint and in the answers thereto as to the heirship of said parties defendant are true, and the questions of law having been argued by counsel and duly considered by the Court, it is, by the Court, this 24th day of July, A. D., 1925,

Adjudged, ordered and decreed that the true interpretation of the aforesaid will of the said Silas Holmes, deceased, is that upon the death of said testator's daughter Virginia Allen, without leaving child her surviving, the real estate described in the bill of complaint, of which said testator died seized and possessed, is devised to Walter Holmes, the [fol. 11] adopted son of said Silas Holmes, and to the brothers and sisters of the said Silas Holmes, or to their heirs, if deceased, in equal shares, share and share alike, per stirpes; and it appearing to the Court that the fund on deposit in the Registry of the Court as aforesaid represents the rents which have accrued from said real estate since the death of the aforesaid Virginia Allen, it is,

Adjudged, ordered and decreed that the said rents be divided among the aforesaid Walter Holmes and the other defendants hereto, who are brothers and sisters of the said Silas Holmes, deceased, or heirs at law of deceased brothers and sisters of the said Silas Holmes, in equal shares, per stirpes.

And it is further adjudged, ordered and decreed that the Court costs, including fee of guardian ad litem, shall be paid out of the assets of the estate.

James F. Smith, Acting Justice.

From the foregoing decree counsel for defendant Lorenzo Allen notes an appeal to the Court of Appeals in open court, whereupon the amount of bond to cover costs of appeal is fixed at One Hundred Dollars or a cash deposit in lieu of bond.

James F. Smith, Acting Justice.

The record in said ejectment case No. 71594, shows the following:

To the declaration the following plea was filed by the defendant on June 18, 1926:

And for further plea to the said declaration, the said defendant, by leave of the court, says that on or about the 11th day of November, A. D. 1892, one Silas Holmes, a citizen of the United States and a resident of the District of Columbia, signed, sealed, published and declared as and for his last will and testament, in the presence of three competent witnesses, a certain paper writing, and that the said certain witnesses, in his presence and in the presence of each other, and at his request, then and there subscribed their several names to said paper writing as witnesses [fol. 12] thereof; and the said defendant further avers that in and by the said paper writing, the said Silas Holmes devised the property described in the plaintiffs' declaration to one Annie Holmes, his widow, and to Virginia Allen, his daughter and only child, during their natural lives, as joint tenants; that the said Annie Holmes, widow, died in the District of Columbia on or about the 8th day of February, 1916, and the said Virginia Allen, daughter and only child of Silas Holmes, the testator, died in said District of Columbia on or about the 24th day of December, 1921, leaving her surviving as her only heir at law and next of kin, Lorenzo Allen, her grandson, the defendant named herein, who is also the great grandson of the testator, Silas Holmes; that under items four (4) and five (5) of the will of the testator, Silas Holmes, it was directed as follows:

"Item 4. That upon the decease of my wife and daughter, the latter leaving issue her surviving, who are minors, all of said above described real estate remaining unsold, as hereinafter provided, shall be sold by the then executor of my last will, under the authority of the Orphans' Court of the District of Columbia, and the proceeds thereof, invested under the orders of said Court, and the interest arising from said investment applied to the support of said minor children of my said daughter, and the principal, upon said children arriving at the majority of the youngest of them shall be divided into and paid to them in equal shares, after deducting from said principal one thousand dollars of said sum which I hereby give, devise and bequeath to my nephew and adopted son Walter Holmes.

"Item 5. If after the decease of my said wife, my daughter shall die without leaving issue surviving, then and in that case, I will, devise and bequeath all of said property, to the said nephew and adopted son, Walter Holmes, and to my brothers and sisters then living, or to their heirs, if deceased, in equal shares."

That defendant further avers that the said Virginia Allen died on or about the 24th day of December, 1921, leaving her surviving one grandchild, the defendant herein Lorenzo Allen, as her only heir at law and next of kin, whose father, the only son of the said Virginia Allen, died during [fol. 13] her lifetime; that the said last will and testament of the said Silas Holmes, the testator, was admitted to probate and record on or about the 18th day of February, 1898; that the said defendant, Lorenzo Allen, thus became possessed as the owner of the property mentioned in plaintiffs' declaration under items four (4) and five (5) of the last will and testament of the testator, Silas Holmes, as the great grandchild of said testator being the grandchild of Virginia Allen, daughter of the testator as her only heir at law and next of kin; that on or about the 5th day of October, 1923, the defendant being then a minor, an order was passed appointing a guardian for said defendant, for the purpose of conserving his interest and accounting to the court for the receipts and expenditures connected with the property referred to in plaintiffs' declaration; the guardianship referred to herein was duly accomplished, and the affairs of the defendant, then a minor, duly administered, according to the rules of the Probate Court, and the final account, filed on or about the 4th day of May, 1925, when the residue of the personal estate and the control of the real estate were turned over to said defendant named, he having then become twenty-one (21) year- of age; that on or about the 10th day of August, 1922, a bill in Equity No. 40-408, was filed by one Thomas Walker, naming as defendants, all the plaintiffs in the declaration, as well as the defendant herein, for the purpose of determining who was entitled to a certain sum of money, which he, the said Thomas Walker had collected as rents from some of the property referred to in said declaration; that in the course of the proceeding, sections four (4) and — (5) of the last will and testament

of the testator, Silas Holmes were submitted to the court for interpretation, and a decree was entered in said Equity cause, to the effect that the defendant, Lorenzo Allen, was not entitled to the property mentioned in said paragraphs 4 and 5 of the will of the said Silas Holmes, the testator; defendant further avers that from the decree entered in said Equity cause No. 40-408, an appeal was duly noted, the same has been perfected, and is now calendared in the Court of Appeals, District of Columbia, numbered 4426; that the subject-matter of the declaration, filed on behalf of the plaintiffs in this cause has been transferred from the [fol. 14] jurisdiction of the Supreme Court of the District of Columbia to the Court of Appeals for final determination, and this the said defendant is ready to verify; wherefore he prays judgment if the said plaintiffs ought to have or maintain their aforesaid action against him.

To which plea the plaintiffs on June 30, 1926, filed a demurrer and motion to strike, as follows:

The plaintiff moves to strike from the files the first plea of the defendant filed herein on the ground that it is a general issue plea and that general issue pleas have been abolished by rule of this Honorable Court

And the plaintiff says that the defendant's second plea is bad in substance.

Among the matters of law intended to be argued upon this demurrer are the following:

a. Under the proper construction of the will recited in said plea the defendant acquired no right, title or interest thereunder in and to the real estate involved in these proceedings.

b. It is not alleged in said plea that upon the appeal therein recited a supersedeas bond was given.

c. It is not alleged in said plea that the right to possession of the real estate involved in these proceedings was one of the matters before the Court for decision.

On July 2, 1926, the said demurrer and motion to strike was sustained with leave to the defendant to amend,

On July 9, 1926, the defendant filed two amended pleas, as follows:

1. Defendant says that the plaintiffs are not entitled to the fee and the right of possession of the property men-

tioned in their declaration, but that the defendant named herein is entitled to the ownership in fee simple of said property and the possession thereof; that the plaintiffs were never lawfully nor actually possessed of said property on the day and date mentioned in said declaration, nor upon any other day or date, and that the defendant did not wrongfully enter into possession of said property, nor did he wrongfully or otherwise eject said plaintiffs from the possession thereof.

[fol. 15] 2. Defendant further says that he is now in possession of said property and of the fee simple title thereto, and has been lawfully so possessed thereof since the 24th day of December, 1921, without interruption to said possession from that date to the present time, and that the right of the defendant to retain title to and possession of said property is now before the Court of Appeals of the District of Columbia for a final decision.

On July 17, 1926, plaintiff filed a demurrer and motion to strike the amended pleas upon the following grounds:

Come now the plaintiffs by their attorneys and move this Honorable Court to strike from the files the amended pleas filed herein upon the ground that said amended pleas are not accompanied by a list of the deeds, proceedings, or other documents relied upon as constituting defendant's chain of title, together with a reference to the place of record of each, if recorded, as required by Common Law Rule 30 of this Honorable Court.

And the plaintiffs say that said amended pleas are bad in susbtance.

Among the matters of law intended to be argued are the following:

1. It is not necessary for the plaintiffs to have alleged, nor that they shall prove that they, or any of them, were actually possessed of the property mentioned in the declaration.

2. The defendant's amended pleas except in so far as they deny plaintiffs' actual possession of said property, consist of the defendant's conclusions of law and do not set up allegations of fact.

3. The first of said amended pleas contains negatives pregnant.

4. The second of said amended pleas does not state what proceeding in the Court of Appeals is there referred to, nor who the parties to such proceedings were.

On July 20, 1926, plaintiffs' demurrer to the amended pleas was sustained and the defendant electing to stand on his amended pleas, judgment for the possession of the property was entered against him and an inquisition ordered as to rents.

[fol. 16] On August 16, 1926, a jury was sworn and verdict was rendered for plaintiffs against the defendant for $1,686.46, mesne profits of said real estate, and on August 21, 1926, judgment was entered upon said verdict.

On August 4, 1926, a writ of possession was issued by the Court directing the Marshal of the District of Columbia to deliver possession of the property to the plaintiffs according to their recovery thereof, and on August 6, 1926, the Marshal returned said writ to the Court stating thereon that he had delivered possession to the plaintiffs on August 6, 1926 as directed.

Plaintiff here says that notwithstanding the matters aforesaid, the Court of Appeals of the District of Columbia on January 3, 1927, by its mandate [illegible] in said equity cause No. 40,408, on September 16, 1927, directed, upon plaintiffs' perfected appeal from the aforesaid decree in said equity cause, dated July 24, 1925, the reversal of the aforesaid decree of July 24, 1925, and remanded the cause to this Honorable Court for further proceedings not inconsistent with its opinion. The material part of said opinion being as follows:

We conclude that neither of the devises contained in items 4 and 5, respectively, ever became operative. The first one failed because testator's daughter died without leaving minor children surviving her, the second failed because testator's daughter died leaving issue, to wit, her grandson, surviving her. The testator therefore died intestate as to the real estate. The decree of the lower court is accordingly reversed, and the cause is remanded for further proceedings not inconsistent herewith. Costs to be paid out of the assets of the estate.

And plaintiff says that thereupon this honorable Court in said equity cause, on May 27, 1927, entered its final decree pursuant to said mandate vacating its said decree of July 24, 1925; said decree of May 27, 1927, being as follows:

This cause came on to be further heard upon the mandate of the Court of Appeals of the District of Columbia, filed herein on the 16th day of February, 1927. Thereupon it is, this 27th day of May, A. D. 1927,

[fol. 17] Adjudged, ordered and decreed as follows:

1. That the decree entered herein on the 24th day of July, A. D. 1925, be, and the same is hereby vacated, set aside and for nothing held;

2. That the true interpretation of the Will of Silas Holmes, deceased, mentioned in the bill of complaint, is that upon the death of said decedent's daughter, Virginia Allen, without leaving child her surviving, the said will became inoperative as to the real estate therein described and the said testator therefore died intestate as to the said real estate;

3. That the fee of the Guardian ad Litem herein be, and the same is hereby fixed at One Thousand Dollars ($1000.00);

4. That the balance of the fund which is the subject matter of this suit, and which is now on deposit in the registry of this Court, be paid to the defendant Lorenzo Allen, as the sole heir at law of the aforesaid testator, after deducting therefrom any unpaid court costs herein incurred by the parties to this suit.

Therefore plaintiff says that even if the defendants here did recover title and possession of the property involved herein by virtue of the proceedings in said ejectment suit, at law, No. 71,594, as aforesaid, and as alleged by the substituted — in their said pleas, and thus established as between the parties hereto the title of the property and possession thereof on August 6, 1926, nevertheless he is entitled to prosecute this suit for the recovery of said property, and that the pleas of the substituted defendants filed to his declaration on January 19, 1928, aforesaid, constitute no legal defense thereto because of the matters aforesaid and because of the decree aforesaid passed in said equity cause on May 27, 1927, pursuant to the mandate of the Court of Appeals.

Alvin L. Newmyer, George C. Gertman, Attorneys for Plaintiff.

[fol. 18] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

ORDER APPOINTING GUARDIAN AD LITEM FOR INFANTS—January 20, 1930

Session resumed pursuant to adjournment, Hon. Jennings Bailey, Justice, presiding.

* * * * * * *

It appearing that the defendants Lillian H. M. Redding and Margaret M. Redding, in each of the above-entitled causes are infants and that no plea or answer has been filed in their behalf, it is ordered that Wilmer J. Latimer, Esqr., be, and he is hereby, in each of said causes appointed guardian ad litem to appear for and plead or answer in their behalf and to represent their interests.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ANSWER OF INFANT DEFENDANTS BY GUARDIAN AD LITEM—Filed February 18, 1930

* * * * * * *

For answer to the declaration filed herein the defendants Lillian M. H. Redding and Margaret M. Redding, by their guardian ad litem, heretofore duly appointed herein, say that said defendants are infants and, therefore, are unable to make other answer thereto than to submit their interests in this suit to the protection of this Honorable Court.

Lillian M. H. Redding, Margaret M. Redding, by J. Wilmer Latimer, Guardian ad Litem.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

DEMURRER TO PLAINTIFF'S REPLICATION—Filed February 18, 1930

* * * * * * *

The defendants Keziah Reed, Thomas Johnson, Annie Goodwin, James T. Holmes, Joseph E. Holmes, Lillian

Holmes (now Lilian Holmes Redding), Jennie B. Golds-
[fol. 19] borough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robinson, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding and James T. S. Redding, say that the plaintiff's replication is bad in substance.

The matter of law intended to be argued is that the judgment in the action in ejectment No. 71594 At Law, wherein the present plaintiff was defendant and the defendants in the present suit were plaintiffs, being the same judgment pleaded in the first plea of these defendants herein, was and is conclusive as to the right of possession of these defendants to the real estate mentioned and described in the declaration herein.

Walter C. Clephane, J. Wilmer Latimer, Gilbert L. Hall, Attorneys for Defendants.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

MEMORANDUM OPINION—Filed April 7, 1930, as of March 28, 1930

* * * * * * * * *

I do not think that the plaintiff sets up any title in the present suit acquired since the former suit and which he did not have at that time, and which he might have asserted then. He failed to appeal from the former judgment and cannot now set up any title which he had at that time.

The demurrer to the replication will be sustained.

Bailey, J.

IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

ORDER SUSTAINING DEMURRER—April 1, 1930

By order of Honorable Jennings Bailey, Justice of the Supreme Court of the District of Columbia, presiding, this court is opened by proclamation of the United States Marshal pursuant to Rule of Court.

* * * * * * * * *

Upon consideration of the demurrer filed herein to plaintiff's replication, it is ordered that the same be and it is [fol. 20] hereby sustained. (An exception is noted at request of attorneys for the plaintiff.)

In Supreme Court of District of Columbia

Supplemental Stipulation—Filed April 7, 1930

* * * * * * *

It is hereby stipulated and agreed by and between the attorneys of record herein for the plaintiff and for the defendants and the Guardian ad Litem for the infant defendants, as follows:

1. That the adult defendants' demurrer to the plaintiff's replication to the defendants' plea in bar is adopted by the Guardian ad Litem as a plea in behalf of the infant defendants; also that the order of the Court sustaining said demurrer shall apply, with equal force, to, and enure to the benefit of the infant defendants, and that subsequent proceedings and orders herein shall, except when otherwise stated, bind or enure to the benefit of said infants, as the case may be.

2. That further action in Law No. 74,482, being an ejectment suit solely between the parties hereto and involving the identical issues as are present here but which affects another piece of real estate which was involved in suit at Law No. 71,594, shall be stayed until the ultimate disposition of this action, whereupon the same judgment shall be entered and executed therein as shall be entered and executed in this action.

3. That a copy hereof be filed in suit at Law No. 74,481.

Alvin L. Newmyer, George C. Gertman, Attorneys for Plaintiff. Clephane & Latimer, Attorneys for Defendants. J. Wilmer Latimer, Guardian ad Litem.

Dated this 7th day of April, 1930.

[fol. 21] IN SUPREME COURT OF THE DISTRICT OF COLUMBIA

JUDGMENT—April 7, 1930

Session resumed pursuant to adjournment, Hon. Jennings Bailey, Justice, presiding.

* * * * * * *

Comes now the plaintiff by his attorneys of record and elects to stand upon his replication filed herein and to which a demurrer was sustained by this court on April 1st, 1930, and thereupon it is ordered that judgment be entered.

Wherefore, it is considered that plaintiff take nothing by this action, that defendants go hence without day, be for nothing held and recover of the plaintiff their costs of defense to be taxed by the clerk and have execution thereof.

From the foregoing judgment the plaintiff by his said attorneys, in open court, notes an appeal to the Court of Appeals; whereupon, the maximum of an undertaking for costs is hereby fixed in the sum of One Hundred Dollars.

MEMORANDUM—April 11, 1930

Cost bond on appeal ($100.00) approved and filed.

IN SUPREME COURT OF DISTRICT OF COLUMBIA

ASSIGNMENTS OF ERROR—Filed April 18, 1930

* * * * * * *

Plaintiff assigns the following errors committed by the trial justice:

1. In sustaining the defendants' demurrer to the plaintiff's replication to the defendants' plea in bar to the declaration.

2. In entering final judgment against the plaintiff in this cause upon said demurrer.

3. In dismissing plaintiff's cause of action upon said demurrer.

A. L. Newmyer, George C. Gertman, Attorneys for Plaintiff.

[fol. 22] Service of copy of the aforegoing Assignment of Errors is acknowledged this 18th day of April, 1930.

Clephane & Latimer, Attorneys for Defendants. J. Wilmer Latimer, Guardian ad Litem for Infant Defendants,

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IN SUPREME COURT OF DISTRICT OF COLUMBIA

DESIGNATION OF RECORD—Filed April 18, 1930

* * * * * * *

The Clerk will please include the following in the record on plaintiff's appeal in the above entitled cause:

1. Declaration.
2. Motion of Keziah Reed, et al., to be substituted as defendants.
3. Minute entry of granting of above motion.
4. Plea of substituted defendants filed January 16, 1928, and list of documents relied upon attached thereto.
5. Stipulation filed on January 16, 1930.
6. Plaintiff's replication filed January 16, 1930 to defendants' plea.
7. Minute entry of January 20, 1930 appointing Guardian ad Litem for infant defendants.
8. Answer of infant defendants through their Guardian ad Litem to the declaration.
9. Demurrer by the adult defendants to the plaintiff's replication.
10. Memorandum opinion of the Court, filed March 28, 1930—April 7, 1930.
11. Minute entry of the ruling of the Court sustaining the demurrer to the plaintiff's replication and plaintiff's exception noted thereto.
12. Stipulation between Counsel for plaintiff and the adult defendants and the Guardian ad Litem.
13. Minute entry of the plaintiff's election to stand upon his said replication notwithstanding the sustaining of the demurrer thereto, the entry of the judgment by the Court for the defendants, the noting of an appeal by the plaintiff in open Court, the fixing of the cost bond of $100.00 and the date of the filing and approval thereof.

[fol. 23] 14. Assignment of errors.
15. This designation.

A. L. Newmyer, George C. Gertman, Attorneys for Plaintiff.

Service of copy hereof accepted this 18th day of April, 1930.

Clephane & Latimer, Attorneys for Defendants. J. Wilmer Latimer, Guardian ad Litem for Infant Defendants.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 24] Minute entry of argument and submission, November 9, 1931, omitted in printing.

[fol. 25] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

No. 5246

LORENZO ALLEN, Appellant,

v.

KEZIAH REED, THOMAS JOHNSON, ANNIE GOODWIN, JAMES T. Holmes, Joseph E. Holmes, Lillian Holmes, Jennie B. Goldsborough, Jesse V. Holmes, Etta Lockwood, Georgiana R. Simpson, James R. Simpson, Virginia Robinson, Randolph Thompson, Mary L. Day, Henry Thompson, Sampson Thompson, Benjamin Mabry, Lewis H. Redding, Louis L. Redding, Cora G. Redding, James T. S. Redding, Lillian M. H. Redding, Infant, by Her Next Friend, Lewis H. Redding; Margaret M. Redding, Infant, by Her Next Friend, Lewis H. Redding, Appellees

Appeal from the Supreme Court of the District of Columbia

Argued November 9, 1931. Decided Dec. 7, 1931

Alvin L. Newmyer, and George C. Gertman, both of Washington, D. C., for appellants.

J. Wilmer Latimer, guardian ad litem for infant appellees, Walter C. Clephane, Gilbert L. Hall, all of Washington, D. C., for appellees.

Before Martin, Chief Justice, and Robb, Van Orsdel, Hitz, and Groner, Associate Justices

OPINION

VAN ORSDEL, Associate Justice:

This appeal is from a judgment of the Supreme Court of the District of Columbia in an ejectment proceeding. The real estate involved in this case was part of the estate of one Silas Holmes, who died November 11, 1892. The appellant here is the testator's great grandson and next of kin, while the appellees are his brothers and sisters and the descendants of brothers and sisters.

In 1922 litigation arose over the rents derived from the property, which called for a construction of the will. On hearing a decree was entered by the court below adjudging the present appellees entitled to the rents and profits. From that decree, the present appellant took an appeal. During the pendency of the appeal, and in the absence of a supersedeas bond, the appellees instituted an action in ejectment against the appellant wholly based on the decree then on appeal, and before the case was determined on appeal, a judgment in favor of appellees was entered, from which no appeal was taken.

[fol. 26] In January, 1927, this court (57 App. D. C. 78) reversed the decree of the court below and remanded the case with instructions to enter a decree in favor of the present appellant. Appellant then brought the present action in ejectment against the appellees, basing his title to the property and right to possession upon the decree entered in accordance with the mandate of this court. Appellees pleaded the former judgment in ejectment in bar. Appellant replied alleging that since the former judgment he had acquired a new and different title from that asserted in the former ejectment proceeding. Appellees demurred to the replication and the demurrer was sustained. Appellant elected to stand upon his replication and judgment was entered for the appellees. From this judgment the present appeal was prosecuted.

There is nothing especially sacred about a judgment in ejectment, nor anything exceptional that does not apply to judgments in general. Section 1002 of the code provides as follows:

"Any final judgment rendered in an action of ejectment shall be conclusive as to the title thereby established as between the parties to the action and all persons claiming under them since the commencement of the action."

It will be observed that this relates to final judgments. A judgment appealed from is not a final judgment. It is merely an adjudication of the inferior court, the finality of which depends upon the action of the superior court. Until the decree upon which the judgment in the first ejectment suit was based, was disposed of on appeal, it was not a final judgment and was not therefore conclusive upon the parties on the question of title. Title remained suspended pending the appeal.

The judgment in the first ejectment proceeding was dependent entirely upon the title acquired through the decree of the Supreme Court of the District of Columbia. But that decree, on appeal, was reversed and therefore became void. It conveyed no title whatever upon which the parties could base their action for possession. As the court said in Golde Clothes Shop v. Loew's Buffalo Theatre, 236 N. Y. 465, 470:

"We are told that the defendant rested upon an order of a court. The prop was insecure, and warning was not lacking of the danger of collapse. When the order was reversed and the proceeding dismissed, rights and duties were reestablished, inter partes, as if no order had been made * * *."

In that case a landowner had been let into possession under a warrant in a summary proceeding and proceeded to tear down buildings and erect valuable improvements on the land pending appeal. The order was reversed and ejectment proceedings brought against the tenant. It was held that there was not even an equitable defense to the action.

The decree based upon the mandate of this court was the first and only final decree upon which a judgment in ejectment could be based. The first ejectment suit was merely

in aid of the first decree. When that decree was reversed, "vacated, set aside, and for nothing held," the judgment for possession shared the fate of the decree upon which reliance was placed for title. It is elementary that when a judgment, order, or decree is set aside, a dependent judgment or proceeding based upon it for its validity shares its fate and falls with it. (4 C. J. p. 1205; Ure v. Ure, 223 Ill. 454; Dodson v. Butler, 101 Ark. 416, 420.)

[fol. 27] The reversal of a judgment or decree places an implied obligation on a party who has received the benefits of the erroneous judgment or decree, to make restitution to the other party for what he has lost. (U. S. v. Bank of Washington, 6 Pet. 8, 17.) It was within the power of the equity court, upon the mandate of this court, to have ordered restitution of possession in its decree. Possessing this power, it would be trifling with justice to hold that the court was without power to grant restitution in ejectment.

The judgment is reversed with costs.

Josiah A. Van Orsdel, Associate Justice.

[fol. 28] In Court of Appeals of District of Columbia, October Term, 1931

No. 5246

Lorenzo Allen, Appellant,

v.

Keziah Reed, Thomas Johnson, Annie Goodwin, et al.

Appeal from the Supreme Court of the District of Columbia

Judgment—Dec. 7, 1931

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia and was argued by counsel. On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said Supreme Court in this cause be and the same is hereby reversed with costs.

Per Mr. Justice Van Orsdel, December 7, 1931.

[fol. 29] IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Dec. 15, 1931

The Clerk will please prepare a transcript of the record in the above entitled cause, including therein the following:

1. The printed record.
2. Minute entry showing argument.
3. Opinion of the Court.
4. The judgment.
5. This designation.
6. Clerk's certificate.

Walter C. Clephane, J. Wilmer Latimer, Gilbert L. Hall, Attorneys for Appellees.

December 15, 1931.

[File endorsement omitted.]

[fol. 30] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 31] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 25, 1932

The petition herein for a writ of certiorari to the Court of Appeals of the District of Columbia, is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,414. District of Columbia Court of Appeals. Term No. 600. Keziah Reed, Georgiana R. Simpson, Lillian M. H. Redding, etc., et al., petitioners, vs. Lorenzo Allen. Petition for a writ of certiorari and exhibit thereto. Filed December 29, 1931. File No. 36,414.